

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320

COPY MAILED

JAN 2:7 2005

OFFICE OF PETITIONS

In re Application of

Shiv Kumar Agarwal et al : DECISION DISMISSING

Application No. 10/827,368 : PETITION UNDER

Filed: April 20, 2004 : 37 CFR 1.55(c)

Attorney Docket No. 115683.01 :

This is a decision on the renewed petition, filed November 5, 2004, under 37 CFR 1.55(c), requesting acceptance of an unintentionally delayed claim under 35 U.S.C. § 119 (a) - (d) for benefit of the filing date of the following foreign application: Indian Application No. 266/MAS/2002, filed October 4, 2002.

A petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority requires:

- (1) The nonprovisional application claiming the benefit of an earlier filing date must be filed on or after November 29, 2000;
- (2) the claim submitted with the petition must identify the prior foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by the application number, country, and the filing date and be included either in an oath or declaration (37 CFR 1.63(c)(2) or in an Application Data Sheet (37 CFR 1.76(b)(6);
- (3) the surcharge of \$1,330.00, as set forth in 37 CFR 1.17(t);
- (4) a statement that the entire delay between the date the claim was due under 37 CFR 1.55(a)(1) and the date the claim was filed was unintentional. (The Commissioner may require additional information where there is a question whether the delay was unintentional.); and
- (5) the above-identified nonprovisional application must be filed within 12 months of the filing date of the foreign application.

The above-identified pending nonprovisional application was filed on April 20, 2004, which is after November 29, 2000, and did not include a reference to the foreign applications, for which benefit is now sought, within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign applications. Therefore, since the claim for priority is submitted after the period specified in 37 CFR 1.55(a)(1)(i), this is an appropriate petition under the provisions of 37 CFR 1.55(c).

The petition under 37 CFR 1.55(c) to accept an unintentionally delayed claim for priority under 35 U.S.C. § 119(a) - (d) is **dismissed**. The petition lacks item (2).

As to item (2), although the petition indicates that a substitute Application Data Sheet is being filed therewith, the record fails to show receipt thereof. Unless provided in an application data sheet, 37 CFR 1.63 requires that the oath or declaration must identify the foreign application for patent or inventor's certificate for which priority is claimed under 37 CFR 1.55, and any foreign applications having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month, and year of its filing. *Note* MPEP 201.14, page 200-77 (Rev. 2, Feb. 2004), last paragraph, second column.

In view of the above, compliance with 37 CFR 1.63 must be satisfied if applicant desires to claim priority to the foreign application noted in the petition. Any future petition should include a cover letter and be entitled "Renewed Petition under 37 CFR 1.55(c)" and should be submitted within two months from the mail date of this decision. *Note* 37 CFR 1.181(f).

The Office acknowledges the priority document received on August 30, 2004.

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop PETITIONS

Commissioner for Patents Post Office Box 1450

Alexandria, VA 22313-1450

By hand:

Customer Window located at:

U.S. Patent and Trademark Office

220 20th Street S

Customer Window, Mail Stop Petitions Crystal Plaza Two Lobby, Room 1B03

Arlington, VA 22202

By fax:

(703) 872-9306

ATTN: Office of Petitions

Any inquiries pertaining to this matter may be directed to Wan Laymon at (571) 272-3220.

Frances Hicks

Lead Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner

for Patent Examination Policy